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SUBJECT: GERMANY BACK ON TRACK TO RATIFY THE EU LISBON TREATY BY THE
END OF THE YEAR

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¶11. (SBU) SUMMARY: Germany's Grand Coalition government should be able to revise the implementing legislation for the EU Lisbon Treaty as mandated by the German Constitutional Court before the September 27 Bundestag election. However, even if this happens, Germany may still not be in a position to deposit its instrument of ratification for the Lisbon Treaty immediately. Since the revised legislation is likely to elicit another constitutional challenge, Germany may have to wait for the Constitutional Court to rule again before going forward. The expectation, however, is that the Court will agree to expedited proceedings, thereby possibly allowing Germany to ratify by the end of the year, a high priority for Chancellor Merkel. Meanwhile, by calling into question the old consensus in favor of European integration, the Court ruling has given license for Euro-skeptic politicians to voice their long-suppressed anti-EU views. While most German politicians support the Court decision, some legal experts argue that the Constitutional Court went beyond its own remit in making this ruling and worry about the implications. END SUMMARY.

IT WASN'T SUPPOSED TO BE LIKE THIS

¶12. (SBU) Chancellor Merkel feels a special attachment to the Lisbon Treaty because the key political breakthroughs leading to its conclusion were made during her chairmanship of the European Council during the first half of 2007. After the Lisbon Treaty was signed in late 2007, the German government moved quickly to complete the necessary parliamentary procedures for ratification, with both the Bundestag and Bundesrat overwhelmingly approving the treaty in early 2008. But the process came to a screeching halt when two constitutional challenges, one by CSU politician Peter Gauweiler and the other from the Left Party, were lodged against the treaty at the German Constitutional Court in Karlsruhe. President Koehler decided he could not sign the instrument of ratification until the Court had ruled on the complaints (reftel).

¶13. (SBU) It took the Court more than a year to announce a ruling, which finally came on June 30, during the last week of the regular Bundestag session. While deciding the Lisbon Treaty itself was constitutional, the Court found the implementing legislation to be inadequate and said the Bundestag and Bundesrat had to be given a greater say in German EU decision-making before the government could proceed with ratification of the Lisbon Treaty. This sent the government scrambling to schedule special sessions of the Bundestag and Bundesrat in late August and early September -- during the height of the parliamentary election campaign -- to consider revised legislation that meets the concerns of the Constitutional Court.

¶14. (SBU) The government is desperate to pass this legislation before the September 27 parliamentary election. Waiting until afterwards could mean a delay of up to four to six months, since legislative

negotiations could only commence once the new government coalition was formed and all the relevant parliamentary committees were set up. Germany would then not be in a position to ratify the Lisbon Treaty until spring 2010 at the earliest, perhaps long after everyone else.

IN LIKE A LION, OUT LIKE A LAMB

15. (SBU) The Christian Social Union (CSU) -- the Bavarian sister party to Chancellor Merkel's Christian Democratic Union (CDU) -- initially seized on the Court's decision to make far-reaching demands for increasing the influence of the federal states on German EU policy and for limiting the competencies of the EU. Among other things, the CSU proposed giving the Bundestag and Bundesrat the right to adopt binding resolutions on EU policy and to subject all major EU decisions, like the accession of new members, to public referenda. Not only did the opposition parties reject these ideas, but both the CDU and the Social Democrats (SPD) did as well, setting up what many feared could be a possible train wreck within the Coalition on the eve of the parliamentary election.

16. (SBU) Calmer heads have since prevailed, with the CSU getting some minor concessions, but otherwise backing off its more ambitious proposals. The CDU/CSU and SPD announced on August 18 that they had reached agreement on the new legislation and that the Free Democrats (FDP) and Greens supported it as well. After a first reading and a parliamentary debate on August 26, the Bundestag is expected to vote on the new law on September 8. The Bundesrat vote is scheduled for September 18.

17. (SBU) While there is basic agreement on the implementing legislation, a couple of CSU demands remain unresolved. The most significant of these is for a reservation to the treaty, specifying that the treaty only applies to Germany within the framework of the

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Constitutional Court decision. All of the other political parties have rejected this proposal, arguing it would call into question Germany's adherence to the treaty and probably prove unacceptable to other EU member states. The solution for this and other remaining demands may be a non-binding resolution that acknowledges CSU concerns, while limiting any negative political or legal repercussions.

18. (SBU) While the CDU and CSU have been butting heads over this EU issue for weeks, there is one thing on which they are both agreed: they need to go into next month's Bundestag election completely united. A CSU Bundestag staffer assured us early on -- even as the party was insisting publicly on its demands -- that the CSU would not allow the negotiations over the implementing legislation to fail.

NOT THE END OF THE STORY

19. (SBU) Even if the revised implementing legislation successfully makes it through both houses of parliament in September, this probably will not be the end of the story. It is all but certain that one or more new constitutional complaints will be filed in Karlsruhe once the Bundestag has passed the new implementing law. The Left Party, and maybe even CSU parliamentarian Peter Gauweiler, are likely to argue that the revised implementing legislation does not go far enough. President Koehler is expected to wait for the Constitutional Court to rule again before signing the instrument of ratification. While the Court took more than a year to make its initial ruling, the hope is that it will act on these new complaints quickly, using expedited procedures. Therefore, there is still a good chance that Germany will be able to ratify by the end of the year, a priority of Chancellor Merkel.

MAKING EURO-SKEPTICISM POLITICALLY CORRECT

10. (SBU) In addition to the impact on ratification of the Lisbon Treaty, the June 30 Court ruling was also significant for what it revealed about German attitudes toward the EU. Before the ruling, it was considered gauche and politically incorrect to criticize or call into question European integration. With the Court's emphasis on national sovereignty and identity, many German politicians, especially within the CSU, have felt free to express in public

long-suppressed reservations and concerns about the ever-increasing concentration of power in Brussels. This shows the degree to which the old consensus that European integration is always unquestionably in Germany's interest has eroded.

¶11. (SBU) The Court ruling has also elevated Peter Gauweiler, heretofore a marginal Bavarian politician, to cult status within the CSU. Previously, he was viewed as a quixotic figure tilting against perceived injustices in an endless series of complaints before the Constitutional Court. One of his more famous complaints was a demand that the Court order the extradition of former U.S. Defense Secretary Rumsfeld to Germany to be prosecuted for war crimes in connection with the U.S. invasion of Iraq. Now that one of Gauweiler's complaints has actually found traction, he is seen by many in his party as a visionary who correctly saw the challenges presented by the Lisbon Treaty.

DID THE COURT GO TOO FAR?

¶12. (SBU) With the dust having settled from the June 30 Court ruling, a debate has begun among experts and legal scholars about whether the Court overstepped its bounds in requiring the government to revise the implementing legislation. The Court took advantage of the complaints against the Lisbon Treaty to thoroughly examine the relationship between the EU and the member states. Even though the German constitution expressly supports the process of European integration, the Court emphasized that this could not be at the expense of the sovereignty of the German people. A leading German EU expert told us that the Court had based its decision on what he called archaic and outdated notions of national sovereignty and national identity, which run counter to the whole concept of European integration. He thought the ruling had set a bad precedent and would encourage further constitutional complaints in the coming years, which could seriously limit the government's negotiating position in Brussels and its ability to commit to further integration.

¶13. (SBU) This expert also regretted that the Constitutional Court had so successfully embarrassed the Bundestag and Bundesrat -- essentially scolding them for not sufficiently protecting their own powers and prerogatives -- that they were willing to make whatever changes to the legislation that the Court demanded. He expressed concern that this could lead the Bundestag and Bundesrat to become overly deferential to the Court and to allow the Court to insert itself into political matters outside its judicial remit.

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